



# Ancient Monuments and Archaeological Areas Act 1979

## 1979 CHAPTER 46

### PART II

#### ARCHAEOLOGICAL AREAS

##### Modifications etc. (not altering text)

- C1** Pt. II (ss. 33-41) extended (E.W.) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), Sch. 9 para.10(1) (with ss. 7(6), 115, 117, Sch. 8 para. 7)

### 33 Designation of areas of archaeological importance.

- (1) The Secretary of State may from time to time by order designate as an area of archaeological importance any area which appears to him to merit treatment as such for the purposes of this Act [<sup>F1</sup>; but, where the area in question is situated in England, he shall consult with the Commission before doing so.]
- (2) A local authority may from time to time by order designate as an area of archaeological importance any area within the area of that local authority which appears to them to merit treatment as such for the purposes of this Act [<sup>F2</sup>; but, where the area in question is situated in England, the authority shall first notify the Commission of their intention to do so.]

[<sup>F3</sup>(2A) The Commission may from time to time by order designate as an area of archaeological importance any area in Greater London which appears to them to merit treatment as such for the purposes of this Act.]

- (3) An order under this section designating an area as an area of archaeological importance (whether made by the Secretary of State or by a local authority [<sup>F4</sup>or by the Commission]) is referred to below in this Act as a designation order.

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- (4) The Secretary of State may at any time by order vary or revoke a designation order, but his power to vary such an order is confined to reducing the area designated by the order.

[<sup>F5</sup>The Secretary of State shall consult with the Commission before varying or revoking an order relating to an area situated in England.]

- (5) A designation order relating to an area in England and Wales shall be a local land charge.

- (6) Schedule 2 to this Act shall have effect with respect to the making, and with respect to the variation and revocation, of designation orders.

#### Textual Amendments

- F1** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 54\(2\)](#)  
**F2** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 54\(3\)](#)  
**F3** [S. 33\(2A\)](#) inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 6, [Sch. 2 para. 2\(2\)\(a\)](#)  
**F4** Words inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 6, [Sch. 2 para. 2\(2\)\(b\)](#)  
**F5** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 54\(4\)](#)

### 34 Investigating authorities for areas of archaeological importance.

- (1) The Secretary of State may at any time appoint any person whom he considers to be competent to undertake archaeological investigations to exercise in relation to any area of archaeological importance the functions conferred by the following provisions of this Part of this Act on the investigating authority for an area of archaeological importance, and any such appointment shall be on such terms and for such period as the Secretary of State thinks fit.

[<sup>F6</sup>The Secretary of State shall consult with the Commission before making an appointment under this subsection in relation to an area situated in England.]

- (2) A person's appointment as investigating authority may be cancelled at any time by the Secretary of State [<sup>F7</sup>; but, where the appointment was made in relation to an area situated in England, he shall consult with the Commission before cancelling the appointment.]

- (3) On appointing or cancelling the appointment of any person as investigating authority for an area of archaeological importance, the Secretary of State shall notify each local authority in whose area the area of archaeological importance in question is wholly or partly situated [<sup>F8</sup>; and, if the area is wholly or partly situated in Greater London, he shall also notify the Commission.]

- (4) Where there is for the time being no person holding appointment under this section as the investigating authority for an area of archaeological importance, the functions of the investigating authority for that area under this Part of this Act shall be exercisable by the [<sup>F9</sup>Commission (in the case of an area situated in England) or the Secretary of State (in any other case)].

- (5) A person duly authorised in writing by any person by whom the functions of an investigating authority under this Part of this Act are for the time being exercisable may act on his behalf in the exercise of those functions.

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#### Textual Amendments

- F6 Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 55\(2\)](#)
- F7 Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 55\(3\)](#)
- F8 Words inserted by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 6, [Sch. 2 para. 2\(3\)](#)
- F9 Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 55\(4\)](#)

### 35 Notice required of operations in areas of archaeological importance.

- (1) Subject to section 37 of this Act, if any person carries out, or causes or permits to be carried out, on land in an area of archaeological importance any operations to which this section applies—
  - (a) without having first served a notice relating to those operations which complies with subsections (4) and (5) below; or
  - (b) within six weeks of serving such a notice;he shall be guilty of an offence.
- (2) Subject to section 37 of this Act, this section applies to any of the following operations, that is to say—
  - (a) operations which disturb the ground;
  - (b) flooding operations; and
  - (c) tipping operations.
- (3) In this Part of this Act the person carrying out or proposing to carry out any operations is referred to, in relation to those operations, as “the developer”, and a notice complying with subsections (4) and (5) below is referred to as an “operations notice”.
- (4) A notice required for the purposes of this section—
  - (a) shall specify the operations to which it relates, the site on which they are to be carried out, the date on which it is proposed to begin them and, where the operations are to be carried out after clearance of the site, the developer’s estimated date for completion of the clearance operations;
  - (b) shall be accompanied by a certificate in the prescribed form which satisfies the requirements of section 36 of this Act; and
  - (c) shall be in the prescribed form.
- (5) A notice required for the purposes of this section shall be served by the developer—
  - (a) in the case of land in England <sup>F10</sup> . . . , on the district council or London borough council or (as the case may be) on each district council or London borough council in whose area the site of the operations is wholly or partly situated;
  - <sup>F11</sup>(aa) in the case of land in Wales, on the council of each county or county borough in which the site of the operations is wholly or partly situated;]
  - (b) in the case of land in Scotland, on the local authority or (as the case may be) on each local authority in whose area the site of the operations is wholly or partly situated; or
  - (c) in a case where the developer is any such council or local authority, on the Secretary of State.
- (6) Regulations made by the Secretary of State may prescribe the steps to be taken by any council or local authority on whom an operations notice is served in accordance with subsection (5) above.

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- (7) Where an operations notice is served with respect to operations which are to be carried out after clearance of any site, the developer shall notify the investigating authority for the area of archaeological importance in question of the clearance of the site immediately on completion of the clearance operations.
- (8) If in a case falling within subsection (7) above the developer carries out, or causes or permits to be carried out, any of the operations to which the operations notice relates without having first notified the investigating authority of the clearance of the site in accordance with that subsection, this section shall have effect in relation to those operations as if the operations notice had not been served.
- (9) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment to a fine.
- (10) Without prejudice to section 222 of the <sup>M1</sup>Local Government Act 1972, any such council as is mentioned in subsection (5)(a) above may institute proceedings for an offence under this section in respect of operations on any site situated partly in their area notwithstanding that the operations are confined to a part of the site outside their area; and if it appears to any such council or, in Scotland, to any local authority—
- (a) that any operations are being, or are about to be, carried out in contravention of this section on any site situated wholly or partly in their area; and
  - (b) that the site contains or is likely to contain anything of archaeological or historical interest which will be disturbed, damaged, destroyed or removed without proper archaeological investigation if operations are carried out on the site without regard for the provisions of this Part of this Act;

that council or local authority may take proceedings in the High Court or, in Scotland, in any court of competent jurisdiction for the purpose of securing an injunction or interdict prohibiting those operations from being carried out in contravention of this section.

- [<sup>F12</sup>(11) This section shall have effect, in relation to any land within the Broads (as defined by the Norfolk and Suffolk Broads Act 1988), as if the Broads Authority were the district council (to the exclusion of the authority which is otherwise the district council for the area in question) and the Broads were its local authority area.]

#### Textual Amendments

- F10** Words in s. 35(5)(a) repealed (1.4.1996) by 1994 c. 19, s. 66(6)(8), Sch. 16 para. 56(2), **Sch.18** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch.2**
- F11** S. 35(5)(aa) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 56(2)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch.2**
- F12** S. 35(11) added (E.W.) by **Norfolk and Suffolk Broads Act 1988** (c. 4, SIF 81:1), ss. 2(5)(6), 23(2), 27(2), Sch. 3 para. 30(2), **Sch. 7**

#### Modifications etc. (not altering text)

- C2** S. 35 excluded by S.I. 1984/1286, **art. 2(1)**
- C3** S. 35 extended (E.W.)(19.9.1995) by 1995 c. 25, ss. 70, 125, **Sch. 9 para. 10(2)**(with ss. 7(6), 115, 117, Sch. 8 para. 7).
- C4** S. 35 excluded (18.12.1996) by 1996 c. 61, s. 12, **Sch. 7 para. 4(10)**
- C5** S. 35 excluded (22.7.2008) by **Crossrail Act 2008** (c. 18), **Sch. 9 para. 4(10)**

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#### Marginal Citations

M1 1972 c. 70.

### 36 Certificate to accompany operations notice under section 35.

- (1) A person is qualified to issue a certificate for the purposes of section 35(4)(b) of this Act if he either—
  - (a) has an interest in the site of the operations which (apart from any restrictions imposed by law) entitles him to carry out the operations in question; or
  - (b) has a right to enter on and take possession of that site under section 11(1) or (2) of the <sup>M2</sup>Compulsory Purchase Act 1965 (powers of entry on land subject to compulsory purchase) or, in the case of a site in Scotland, under paragraph 3(1) of Schedule 2 to the <sup>M3</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.
- (2) Statutory undertakers are qualified to issue a certificate for the purposes of section 35(4)(b) of this Act if they are entitled by or under any enactment to carry out the operations in question.
- (3) Any such certificate—
  - (a) shall be signed by or on behalf of a person or persons qualified in accordance with subsection (1) or (2) above to issue it;
  - (b) shall state that the person issuing the certificate has an interest within paragraph (a) or (as the case may be) a right within paragraph (b) of subsection (1) above or, in the case of a certificate issued by statutory undertakers, shall state that it is so issued and specify the enactment by or under which they are entitled to carry out the operations in question; and
  - (c) if the person issuing the certificate is not the developer, shall state that he has authorised the developer to carry out the operations.
- (4) If any person issues a certificate which purports to comply with the requirements of this section and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding [<sup>F13</sup>level 3 on the standard scale].

#### Textual Amendments

F13 Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48\), s. 46](#) and [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\), s. 289G](#) (as inserted by [Criminal Justice Act 1982 \(c. 48\), s. 54](#))

#### Marginal Citations

M2 1965 c. 56.

M3 1947 c. 42.

### 37 Exemptions from offence under section 35.

- (1) Section 35 of this Act does not apply to any operations carried out with the consent of the investigating authority for the area of archaeological importance in question.

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[<sup>F14</sup>(1A) Section 35 does not apply to the carrying out of any operations for which development consent has been granted.]

(2) The Secretary of State may by order direct that section 35 shall not apply to the carrying out, or to the carrying out by any class or description of persons specified in the order, of operations of any class or description so specified; and an exemption conferred by an order under this subsection may be either unconditional or subject to any conditions specified in the order.

(3) The Secretary of State may direct that any exemption conferred by an order under subsection (2) above shall not apply to the carrying out on any land specified in the direction, or to the carrying out on any land so specified by any class or description of persons so specified, of operations of any class or description so specified, and may withdraw any direction given under this subsection.

[<sup>F15</sup>The Secretary of State shall consult with the Commission before giving or withdrawing a direction under this subsection in relation to land situated in England.]

(4) A direction under subsection (3) above shall not take effect until notice of it has been served on the occupier or (if there is no occupier) on the owner of the land in question.

(5) In any proceedings for an offence under section 35 consisting in carrying out, or causing or permitting to be carried out, any operations which disturb the ground, it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid or prevent disturbance of the ground.

(6) In any proceedings for an offence under section 35 it shall be a defence for the accused to prove either—

(a) that he did not know and had no reason to believe that the site of the operations was within an area of archaeological importance;

(b) that the operations were urgently necessary in the interests of safety or health and that notice in writing of the need for the operations was given to the Secretary of State as soon as reasonably practicable.

#### Textual Amendments

**F14** S. 37(1A) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), Sch. 2 para. 19 (with s. 226); S.I. 2010/101, art. 2 (with art. 6)

**F15** Words inserted by National Heritage Act 1983 (c. 47, SIF 78), s. 41, Sch. 4 para. 56

### 38 Powers of investigating authority to enter and excavate site of operations covered by an operations notice.

(1) Where an operations notice is served with respect to any operations, the investigating authority for the area of archaeological importance in which the site of the operations is situated shall thereupon have a right to enter, at any reasonable time, the site and any land giving access to the site, for either or both of the following purposes, that is to say—

(a) for the purpose of inspecting the site (including any buildings or other structures on the site) with a view to recording any matters of archaeological or historical interest and determining whether it would be desirable to carry out any excavations in the site; and

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- (b) for the purpose of observing any operations carried out on the site with a view to examining and recording any objects or other material of archaeological or historical interest, and recording any matters of archaeological or historical interest, discovered during the course of those operations.

(2) Where—

- (a) an operations notice is served with respect to any operations; and
- (b) the investigating authority for the area of archaeological importance in which the site of the operations is situated serves notice in accordance with subsection (3) below of its intention to excavate the site;

the investigating authority shall have a right to carry out excavations in the site for the purpose of archaeological investigation at any time during the period allowed for excavation in accordance with subsection (4) below.

(3) The investigating authority shall only have a right to excavate the site of any operations in accordance with subsection (2) above if before the end of the period of four weeks beginning with the date of service of the operations notice the authority—

- (a) serves notice in the prescribed form of its intention to excavate on the developer; and
- (b) serves a copy of that notice on any council (in England and Wales) or local authority (in Scotland) served with the operations notice and also (unless the functions of the investigating authority are for the time being exercisable by the Secretary of State) on the Secretary of State. <sup>[F16]</sup>and
- (c) where the site in question is situated in England, serves a copy of that notice on the Commission (unless the investigating authority is for the time being the Commission).]

(4) The period allowed for excavation under subsection (2) above is the period of four months and two weeks beginning—

- (a) with the date immediately following the end of the period of six weeks beginning with the date of service of the operations notice; or
- (b) where the operations specified in the operations notice are to be carried out after clearance of the site, with the date of receipt of the notification of clearance of the site required under section 35(7) of this Act or with the date first mentioned in paragraph (a) above (whichever last occurs); or
- (c) with any earlier date agreed between the investigating authority and the developer.

(5) Where—

- (a) the investigating authority has served notice of its intention to excavate the site in accordance with subsection (3) above; and
- (b) the period of six weeks beginning with the date of service of the operations notice has expired;

the investigating authority shall have a right to carry out excavations in the site for the purpose of archaeological investigation notwithstanding that the period allowed for excavation in accordance with subsection (4) above has not yet begun, but only if the authority does not thereby obstruct the execution on the site by the developer of clearance operations or any other operations to which section 35 of this Act does not apply.



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- (6) The investigating authority may at any reasonable time enter the site and any land giving access to the site for the purpose of exercising a right to excavate the site in accordance with subsection (2) or (5) above.
- (7) If operations to which the operations notice relates are carried out on the site at a time when the investigating authority has a right to excavate the site in accordance with subsection (2) or (5) above section 35 of this Act shall have effect in relation to those operations as if the operations notice had not been served (subject, however, to any exemption or defence conferred by or under section 37 of this Act).
- (8) The Secretary of State may at any time direct—
- (a) that an investigating authority shall comply with any conditions specified in the direction in exercising any of its powers under the preceding provisions of this section in relation to any site; or
  - (b) that any such power shall cease to be exercisable by an investigating authority in relation to the whole or any part of any site;
- and may vary or revoke any direction given under paragraph (a) above.

[<sup>F17</sup>The Secretary of State shall consult with the Commission before giving, varying or revoking a direction under this subsection in relation to a site situated in England.]

- (9) On giving a direction under subsection (8) above the Secretary of State shall serve a copy of the direction on each of the following persons, that is to say—
- (a) the investigating authority;
  - (b) any council (in England and Wales) or local authority (in Scotland) served with the operations notice in question;
  - (c) the developer; and
  - (d) any person other than the developer by whom the certificate accompanying the operations notice in accordance with section 35(4)(b) of this Act was issued;
- and on varying or revoking any such direction the Secretary of State shall notify the same persons (giving particulars of the effect of any variation).

[<sup>F18</sup>(10) On giving a direction under subsection (8) above in relation to a site situated in England the Secretary of State shall send a copy of the direction to the Commission (if the investigating authority is not the Commission).

- (11) On varying or revoking a direction given under subsection (8) above in relation to a site situated in England the Secretary of State shall notify the Commission (giving particulars of the effect of any variation) if the investigating authority is not the Commission.]

#### Textual Amendments

**F16** S. 38(3)(c) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 57\(2\)\(5\)](#)

**F17** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 57\(3\)](#)

**F18** S. 38(10)(11) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 57\(4\)](#)

### 39 Power of investigating authority to investigate in advance of operations notice any site which may be acquired compulsorily.

- (1) If an authority possessing compulsory purchase powers notifies the investigating authority for any area of archaeological importance that it proposes to carry out, or



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to authorise someone else to carry out, on any site in the area, any operations of a description mentioned in section 35(2) of this Act (other than exempt operations), the investigating authority shall thereupon have a right to enter, at any reasonable time, the site and any land giving access to the site, for the purpose mentioned in section 38(1)(a) of this Act.

In this subsection “exempt operations” means operations excluded from the application of section 35 by an order under section 37 of this Act.

- (2) The right of an investigating authority to enter any site by virtue of subsection (1) above shall cease at the end of the period of one month beginning with the day on which it is first exercised.
- (3) Section 38(8) of this Act shall apply in relation to the power of entry under this section as it applies in relation to the powers of an investigating authority under that section.
- (4) Section 38(9) of this Act shall not apply in relation to a direction under section 38(8) with respect to the exercise of the power of entry under this section, but on giving any such direction the Secretary of State shall serve a copy of the direction on each of the following persons, that is to say—
  - (a) the investigating authority;
  - (b) the authority possessing compulsory purchase powers; and
  - (c) the owner and (if the owner is not the occupier) the occupier of the site in question; <sup>F19</sup>and
  - (d) where the site in question is situated in England, the Commission (if the investigating authority is not the Commission);]and on varying or revoking any such direction the Secretary of State shall notify the same persons (giving particulars of the effect of any variation).
- (5) In this section “authority possessing compulsory purchase powers” means any person or body of persons who could be or have been authorised to acquire an interest in land compulsorily.

#### Textual Amendments

**F19** S. 39(4)(d) inserted by National Heritage Act 1983 (c. 47, SIF 78), s. 41, **Sch. 4 para. 58**

#### Modifications etc. (not altering text)

**C6** S. 39(1) amended (18.12.1996) by 1996 c. 61, s. 12, **Sch. 7 para. 4(11)**

**C7** S. 39(1) modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 9 para. 4(11)**

## 40 Other powers of entry on site of operations covered by an operations notice.

Where an operations notice is served with respect to any operations—

- (a) any person duly authorised in writing by the Secretary of State may at any reasonable time enter the site of the operations for the purpose of inspecting the site (including any building or other structure on the site) and recording any matters of archaeological or historical interest observed in the course of that inspection; and
- (b) any person duly authorised in writing by the Royal Commission on Historical Monuments may at any reasonable time enter the site for the purpose of inspecting any building or other structure on the site and recording any

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matters of archaeological or historical interest observed in the course of that inspection.

#### **41 Interpretation of Part II.**

(1) In this Part of this Act—

- (a) “the developer” and “operations notice” have the meanings respectively given by section 35(3) of this Act;
- (b) references to a London borough council include references to the Common Council of the City of London;
- (c) references to operations on any land include references to operations in, under or over the land in question;
- (d) references to the clearance of any site are references to the demolition and removal of any existing building or other structure on the site and the removal of any other materials thereon so as to clear the surface of the land (but do not include the levelling of the surface or the removal of materials from below the surface); and
- (e) references to clearance operations are references to operations undertaken for the purpose of or in connection with the clearance of any site.

(2) For the purposes of this Part of this Act, the investigating authority for an area of archaeological importance is the person for the time being holding appointment as such under section 34 of this Act or (if there is no such person) the [<sup>F20</sup>Commission (in a case where the area is situated in England) or the Secretary of State (in any other case)].

#### **Textual Amendments**

**F20** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 59](#)

**Status:**

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**Changes to legislation:**

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